

Last reviewed and edited July 16, 2004
Last Amended January 1, 2003

Maine Rules of Probate Procedure

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MAINE RULES OF PROBATE PROCEDURE

(Including amendments through those effective January 1, 2003)

I. SCOPE OF RULES--FORM OF PROCEEDINGS.

RULE 1. SCOPE OF RULES

These rules govern the procedure in all proceedings in the Probate Courts, with the limitations stated in Rule 81. These rules also govern the procedure on removal from the Probate Courts to the Superior Court and in appeals from the Probate Courts to the Supreme Judicial Court sitting as the Law Court. The rules shall be construed to secure the just, speedy, and inexpensive determination of every proceeding.

RULE 2. FORM OF PROCEEDINGS

There shall be two forms of proceedings to be known as "probate proceedings" and "civil proceedings."

(a) Probate Proceedings. "Probate proceedings" are all proceedings within the exclusive jurisdiction of the Probate Courts.

(1) *Informal Probate Proceedings*. "Informal probate proceedings" are proceedings for the informal probate of a will or the informal appointment of a personal representative brought under the authority of Article III of the Probate Code.

(2) *Formal Probate Proceedings*. "Formal probate proceedings" are all other probate proceedings.

(b) Civil Proceedings. "Civil proceedings" are all proceedings within the concurrent jurisdiction of the Probate Courts.

II. COMMENCEMENT OF PROCEEDINGS: SERVICE OF NOTICE, PROCESS, PLEADINGS, MOTIONS, AND ORDERS; TIME

RULE 3. COMMENCEMENT OF PROCEEDINGS

(a) Probate Proceedings. An informal probate proceeding is commenced by filing with the court an application directed to the register. Except as otherwise provided by statute or these rules, a formal probate proceeding is commenced by filing with the court a petition directed to the judge.

(b) Civil Proceedings. Except as otherwise provided by statute or these rules, a civil proceeding is commenced in the manner provided for civil actions by Rule 3 of the Maine Rules of Civil Procedure.

RULE 4. NOTICE; PROCESS

(a) Form of Notice and Summons.

(1) *Notice in Probate Proceedings.*

(A) In informal probate proceedings the notice shall bear the signature or facsimile signature of the register, contain the name of the court and the name of the decedent, be directed to the recipient by name if known, state the action sought, including the name and address of any personal representative proposed, state the name and address of the applicant, and advise the recipient that the application has been or will be granted if in proper form and that the recipient may begin a formal proceeding if the recipient disagrees with the granting of the application.

(B) In formal probate proceedings, the notice shall bear the signature or facsimile signature of the register, contain the name of the court and the name of the decedent or minor or incapacitated or disabled person, be directed to the recipient by name if known, state the name and address and telephone number of the petitioner or of the petitioner's attorney, state the date and place of hearing or reply if either is required, and advise the recipient that the action or order sought may be granted if no interested person appears to object.

(2) *Summons in Civil Proceedings.* In civil proceedings the form of summons shall be similar to that provided in Rule 4(a) of the Maine Rules of Civil Procedure.

(b) Issuance of Notice and Summons.

(1) *Probate Proceedings.*

(A) In informal probate proceedings, the notice shall be filled out by the register as provided in subparagraph (a)(1)(A) of this rule.

(B) In formal probate proceedings, the notice may be procured in blank from the register and filled out by the petitioner or the petitioner's attorney as provided in subparagraph (a)(1)(B) of this rule. Alternatively, if the notice is to be served by the register as provided in subparagraph (c)(1)(B) of this rule, the notice shall be filled out by the register. If the notice is to be served personally, the attorney shall deliver to the person serving it the original notice upon which to make his return of service and a copy of the notice and petition for service. If the will is annexed to the petition, the copy of the petition to be served need not include the will.

(2) *Civil Proceedings.* In civil proceedings, the summons shall be filled out and delivered in the manner provided by Rule 4(b) of the Maine Rules of Civil Procedure.

(c) By Whom Served.

(1) *Probate Proceedings.*

(A) In informal probate proceedings, service shall be made by the register on behalf of the petitioner. The application shall contain a written request for such service accompanied by a tender of fees and a list of persons to be served and their addresses if known.

(B) In formal probate proceedings, service by mail shall be made by the petitioner or the petitioner's attorney or by the register on the petitioner's behalf. Personal service shall be made by a sheriff or a deputy within the sheriff's county, or by a constable or other person authorized by law, or by some person specially appointed by the court, except that a subpoena may be served as provided in Rule 45. Special appointments to serve process shall be made freely when substantial savings in travel fees will result. Service by publication shall be made by the register on behalf of the petitioner unless otherwise ordered by the court. When service by any method is to be made by the register, the petition shall contain a written request for such service, accompanied by a tender of fees and a list of persons to be served and their addresses if known.

(2) *Civil Proceedings*. In civil proceedings, service shall be made as provided in Rule 4(c) of the Maine Rules of Civil Procedure.

(d) Service of Notice and Summons.

(1) *Probate Proceedings*. In probate proceedings, the notice and, where appropriate, the petition shall be served together by one of the following methods:

(A) In informal probate proceedings, the notice shall be served upon all persons specified in sections 3-306 and 3-310 of the Probate Code by ordinary mail addressed to the recipient at the post office address given in the recipient's demand for notice, if any, or at the recipient's office or place of residence. Service by mail is complete upon mailing. Service shall also be made by publication as provided in subdivision (e) of this rule upon any of the specified persons whose address or present whereabouts is unknown and cannot be ascertained by due diligence or, on request of the applicant, upon all unknown persons.

(B) In formal probate proceedings, except as otherwise provided by statute, the notice and petition shall be served by certified mail, with restricted delivery and return receipt requested, upon all persons upon whom service is required by statute, including any person who has made a demand for notice as provided in Rule 4D. The mailing shall be addressed to the recipient at the post office address given in the recipient's demand for notice, if any, or at the recipient's office or place of residence. Service by certified mail is complete when the mail is delivered and the receipt signed or when acceptance is refused or unclaimed, provided that the petitioner or register shall file either the return receipt or, if acceptance was refused or unclaimed, an affidavit that upon notice of such refusal or failure to claim a copy of the notice and petition was sent to the party being served by ordinary mail. Alternatively, the notice and petition may be served upon any of such persons personally, and shall be so served if statute requires, by any method provided in subdivisions (d) or (e) of Rule 4 of the Maine Rules of Civil Procedure for service of process in civil actions. Service shall also be made by publication as provided in subdivision (e) of this rule upon any such persons whose address or present whereabouts is unknown and cannot be ascertained by due diligence and, in any other proceeding on request of the petitioner, upon all unknown persons.

(C) If a party to be served is an infant, copies of the notice and the petition shall also be served by the appropriate method upon the infant's guardian, if the infant has one within the state known to the party making service and, if not, then upon the infant's father or mother or other person having the infant's care or control or with

whom the infant resides. If service cannot be made upon any of them, then it shall be made as provided by order of the court.

(D) If a party to be served is an incompetent person copies of the notice and petition shall also be served by the appropriate method upon the guardian of the incompetent person or a competent adult member of the incompetent person's family with whom the incompetent person resides or, if the incompetent person is living in an institution, then upon the director or chief executive officer of the institution. If service cannot be made upon any of them, then it shall be made as provided by order of the court. The court may order that service not be made upon the incompetent person.

(E) The court on its own motion or for cause shown may order service to be made upon any party by a method other than those specified in this paragraph, so long as the method ordered is as calculated to give notice to the party as any other method reasonably available in all the circumstances.

(2) *Civil Proceedings.* In a civil proceeding the summons and complaint shall be served as provided in subdivisions (d), (e), and (f) of Rule 4 of the Maine Rules of Civil Procedure.

(e) Service by Publication.

(1) *Probate Proceedings.* In probate proceedings, when service by publication is required by this rule or by order of the court, the register, on behalf of the applicant or petitioner, shall cause the substance of the notice prescribed by paragraph (1) of subdivision (a) of this rule, and in formal probate proceedings a brief statement of the object of the petition, to be published once a week for two successive weeks in a designated newspaper of general circulation in the county where the application or petition was filed. The first publication of the notice shall be made within 35 days after the application or petition is filed or the order is granted. Service by publication is complete on the fourteenth day after the first publication.

(2) *Civil Proceedings.* In civil proceedings, service by publication shall be made as provided in Rule 4(g) of the Maine Rules of Civil Procedure.

(f) Proof of Notice; Return of Service.

(1) *Probate Proceedings.* In informal probate proceedings, the findings made and signed by the register representing that notice has been given shall constitute an affidavit of notice. In formal probate proceedings, where the notice is served by mail

or publication, the statement of the register or the petitioner or the petitioner's attorney, appended to or filed with a copy of the notice, setting forth the means by which service was made upon each person served, and accompanied by any documentary evidence that service was completed, shall constitute an affidavit of notice. Where the notice is served personally, proof of service shall be made as provided for civil proceedings in paragraph (2) of this subdivision.

(2) *Civil Proceedings.* In civil proceedings, proof of service shall be by return or affidavit as provided in Rule 4(h) of the Maine Rules of Civil Procedure.

(g) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any notice, process, or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the notice or process issued.

(h) Alternative Provisions for Service in a Foreign Country.

(1) *Manner.* When service is to be effected upon a party in a foreign country, it is also sufficient if service of the notice and petition, if appropriate, or the summons and complaint is made:

(A) In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) As directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or

(C) Upon an individual, by delivery to the individual personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or

(D) By any form of mail requiring a signed receipt, to be addressed and dispatched by the register to the party to be served; or

(E) As directed by order of the court.

Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the court or by the foreign court. On request, the register shall deliver the notice or summons to the party

making service for transmission to the person or the foreign court or officer who will make the service.

(2) *Return.* Proof of service may be made as prescribed by subdivision (f) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision (h), proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

RULE 4A. ATTACHMENT

Rule 4A of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

RULE 4B. TRUSTEE PROCESS

Rule 4B of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

RULE 4C. ARREST [ABROGATED]

RULE 4D. DEMAND AND WAIVER OF NOTICE

(a) Demand for Notice. Any interested person desiring notice of any filing, hearing, or order in a proceeding concerning a decedent's estate or in a protective proceeding may file a demand for notice with the register of any court at any time after the death of the decedent or at any time during the minority or disability of a person who may be the subject of a protective proceeding. The demand shall state the name of the decedent or minor or disabled person, the nature of the demandant's interest in the estate, and the address to which the notice shall be sent. The register shall mail a copy of the demand to any personal representative or conservator who has been or shall thereafter be appointed. Thereafter, any filing, notice of hearing, or order entered in that court concerning the estate of the decedent or minor or disabled person shall be served upon the demandant as provided in Rule 4(d) or 5 by the person making the filing or seeking the hearing or by the register of the court where the order is entered, as appropriate. The demandant shall pay to the register the statutory fee for all copies received from the register.

(b) Waiver of Notice. Any person, including a guardian ad litem, conservator, or other fiduciary, whether or not the person has previously filed a demand for notice, may at any time after the commencement of a proceeding waive all further notice of any filing, hearing, or order by filing with the register a written waiver signed by the person or the person's attorney; except that an alleged incapacitated person may waive notice in a proceeding for the appointment or removal of a guardian only as provided in section 5-309(b) of the Probate Code.

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Probate Proceedings. Rule 5(a)-(g) & (j) of the Maine Rules of Civil Procedure governs procedure in the Probate Courts so far as applicable for all papers filed in probate proceedings, except applications or petitions requiring notice to be served under Rule 4. The Register of Probate is the clerk for filings in probate proceedings. Service under this rule shall be made upon any person who has filed a demand for notice concerning the estate in question, and upon any other person as required by statute or these rules or order of the court.

(b) Civil Proceedings. Rule 5(a)-(g) & (j) of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts. Service under this rule shall be made upon any person who has filed a demand for notice concerning the estate in question.

RULE 6. TIME

Rule 6 of the Maine Rules of Civil Procedure governs procedure in all proceedings in the Probate Courts, so far as applicable, substituting the Chief Justice of the Supreme Judicial Court for the Chief Justice of the Superior Court.

III. PLEADINGS AND MOTIONS

RULE 7. PLEADINGS ALLOWED; FORM OF MOTIONS

(a) Pleadings.

(1) *Probate Proceedings*. In probate proceedings, there shall be an application in informal probate proceedings and a petition in all formal probate proceedings where provided by statute. In formal probate proceedings, there shall be a reply to a petition when required or permitted by these rules or by order of court. No other pleading shall be allowed except when required or permitted by order of court.

(2) *Civil Proceedings.* Rule 7(a) of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

(b) *Motions and Other Papers.* Rule 7(b) of the Maine Rules of Civil Procedure governs the procedure in all proceedings in the Probate Courts, except that in probate proceedings an order shall be sought by application or petition where so provided by law or by these rules.

(c) *Demurrers, Pleas, etc., Abolished.* Rule 7(c) of the Maine Rules of Civil Procedure governs procedure in all proceedings in the Probate Courts.

RULE 8. GENERAL RULES OF PLEADING

(a) Probate Proceedings.

(1) *Content of Pleadings.* Every application and petition in a probate proceeding shall set forth in short and plain terms all of the matters required by statute to be pleaded to obtain the action or order sought and a specific request for that action or order. In formal probate proceedings, the interests to be affected shall be described in terms which give reasonable information to owners by name or class, by reference to the instrument or statute creating the interests or to any other source of such interests, or in other appropriate manner.

(2) *Objections; Denials Not Required; Effect.* When a reply is required or permitted by these rules or by order of court, objections or other affirmative matter shall be set forth in short and plain terms. Denials of the allegations of the petition shall not be made. Such allegations, and any affirmative matter pleaded in a reply, shall be taken as denied or avoided.

(3) *Construction of Pleadings.* All pleadings shall be so construed as to do substantial justice.

(4) *Certificate of Value.* Upon the filing of any application or petition for the determination of testacy status or appointment of a personal representative, the register of probate shall require the applicant or petitioner to submit a statement or certificate of value for the purposes of determining the appropriate filing fees, the need for the filing of any inheritance tax bond, or the amounts of any bond that is required. Except in the case of public administration under 18-A M.R.S.A. § 3-619, upon completion of the determination of the amount of filing fees and the need for

and amount of the inheritance tax or other bond, and upon the request of the applicant or petitioner, the register shall return the statement or certificate of value and any copies to the applicant or petitioner. The statement or certificate of value shall not be a public record, except that in the case of public administration under 18-A M.R.S.A. § 3-619 the statement or certificate of value shall be treated as any other record is ordinarily treated in the registry of probate.

(b) Civil Proceedings. Rule 8 of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

RULE 9. PLEADING SPECIAL MATTERS

Rule 9 of the Maine Rules of Civil Procedure governs procedure in all proceedings in the Probate Courts so far as applicable.

RULE 10. FORM OF PLEADINGS

(a) Caption; Title. Every pleading shall contain a caption setting forth the name of the court and the county, the title of the proceeding, the docket number, and a designation as in Rule 7(a).

(1) In an application, petition or other pleading in a probate proceeding, the title of the proceeding shall include the name of the decedent, minor, or incapacitated or disabled person involved and an appropriate phrase describing the type of proceeding. An application shall be directed to the register and a petition shall be directed to the judge.

(2) In a complaint in a civil proceeding the title of the proceeding shall include the names of all the parties, but in other pleadings in a civil proceeding it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(3) An application, petition, or complaint shall be dated.

(b) Paragraphs; Separate Statements. Rule 10(b) of the Maine Rules of Civil Procedure governs procedure in proceedings in the Probate Courts.

(c) Adoption by Reference; Exhibits. Rule 10(c) of the Maine Rules of Civil Procedure governs procedure in proceedings in the Probate Courts.

RULE 11. SIGNING OF PLEADINGS

(a) Probate Proceedings.

(1) *Informal Probate Proceedings.* In informal probate proceedings, the application shall be verified by the applicant and shall state the applicant's address and the name and address of the applicant's attorney, if any.

(2) *Formal Probate Proceedings.* Rule 11 of the Maine Rules of Civil Procedure governs procedure in formal probate proceedings in the Probate Courts.

(b) Civil Proceedings. Rule 11 of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

RULE 12. DEFENSES AND OBJECTIONS: WHEN AND HOW PRESENTED BY PLEADING OR MOTION; MOTION FOR JUDGMENT ON THE PLEADINGS

(a) Probate Proceedings.

(1) *Informal Probate Proceedings.* In informal probate proceedings, no pleading after the application shall be required or permitted.

(2) *Formal Testacy, Appointment Proceedings and Change of Name Proceedings.* In formal probate proceedings for the determination of testacy, the appointment of a personal representative, guardian or conservator, or a change of name, the notice of hearing shall set a date for hearing which shall be at least 14 days after the first publication of notice under Rule 4 (e)(1) or at least 14 days after the completion of service upon all persons to be served by other means, whichever is later. Any interested person may at or before the hearing file a written reply stating objections to the action or order sought in the petition or stating any other matter which the person wishes to raise, or the person may state such objections or other matter in an oral reply at the hearing. If a party who opposes the probate of a will for any reason makes an oral reply stating the party's objections thereto, the party shall file a written reply setting forth those objections within such time after the hearing as the court may order. If a party states any other objections or matter in an oral reply, the court may order the party to file a written reply specifically stating such objections or matter within such time after the hearing as may be just. If a written reply is filed at any time, the hearing may be continued as to all issues involved in the objections or other matter there stated for a period sufficient to allow all parties fairly to be heard on those issues.

(3) *Other Formal Probate Proceedings.* In all other formal probate proceedings, an interested person who wishes to state objections to the action or order sought in the petition or raise any other matter shall serve a reply within 20 days after the service of the notice and petition upon the person unless the court otherwise orders, and provided that any person served outside the continental United States or Canada may serve a reply within 50 days after such service.

(4) *Preliminary Motion.* In formal probate proceedings, at the option of the pleader, the objections of lack of jurisdiction of the subject matter, lack of jurisdiction of the person, improper venue, and legal insufficiency of the petition may be raised by motion at any time before a hearing set under paragraph (2) of this subdivision, or before the filing of a reply required under paragraph (3) of this subdivision, or before hearing if no reply is required. The court may determine the issues raised before hearing or may postpone determination until the hearing. Any further pleading required shall be served within 10 days after notice of the court's action.

(5) *Waiver.* If a motion is made under paragraph (4) of this subdivision, all objections mentioned in that paragraph that were then known to the movant are waived if not joined in the motion, and if no motion is made every objection or other matter that could reasonably have been known to and presented by an interested person shall be deemed waived if not presented as provided in paragraph (2) or (3) of this subdivision; provided that (A) an objection raising the legal insufficiency of the petition may be presented by motion at any time prior to final disposition of the petition, and (B) whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the petition.

(b) Civil Proceedings. Rule 12 of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

RULE 13. COUNTERCLAIM AND CROSS-CLAIM

Rules 13(b) through (i) of the Maine Rules of Civil Procedure govern procedure in formal probate proceedings for the allowance of claims against a decedent's estate and in civil proceedings in the Probate Courts.

RULE 14. THIRD-PARTY PRACTICE

Rule 14 of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

Rule 15 of the Maine Rules of Civil Procedure governs procedure in all proceedings in the Probate Courts, so far as applicable.

RULE 16. PRETRIAL PROCEDURE

(a) Pretrial Conference. In formal probate and civil proceedings, the court may, in its discretion, order the parties to appear before it for a pretrial conference to consider the following matters:

(1) The court's action in disposing of all motions pending at the time of pretrial conference.

(2) The court's action in respect to the filing by counsel of further motions and the date by which such filings shall be accomplished.

(3) Any instruction of the court to counsel in respect to further amendment of the pleadings in the case and the date by which such further amendment of the pleadings shall be completed.

(4) A detailed and concise specification of the issues to be tried and a listing of the legal theories of each of the parties on each such issue.

(5) The action of the court and counsel concerning admissions or stipulations of fact and agreements to authenticity or admissibility of exhibits at trial. In the alternative, the court may order counsel to file with the court by a date specified in the Pretrial Order stipulations of fact and to the authenticity or admissibility of exhibits to be offered at trial.

(6) A listing of all expert witnesses to be called at trial by the parties and any limitations imposed by the court on the number of expert witnesses to testify at trial.

(7) The action of the court on further discovery to be permitted and the date by which such discovery is to be completed.

(8) Any requirements imposed by the court in respect to filing in advance of trial of legal memoranda, trial briefs or briefs on specific questions and the date by which such filings shall be accomplished.

(9) A date established by the court by which all counsel shall have met, exchanged and premarked for identification all exhibits to be offered at trial.

(10) A date, established by the court, by which the parties and counsel shall be ready for trial of the case.

(11) Any action of the court with respect to the order of proof or witnesses at trial.

(12) A list of all witnesses to be called by the parties at trial of the case. The court shall specify a date by which notice shall be given to the court and opposing counsel of any addition to this list of witnesses by any party.

(13) Any action by the court requiring any party or counsel to provide further evidence or information in respect to the case to opposing counsel and the date by which that is to be accomplished.

(14) A finding as to whether each counsel has explored settlement negotiations toward a fair disposition of the case by settlement.

(15) Other action by the court to aid in the disposition of the matter by settlement or trial.

The court may direct counsel to prepare and submit to the court a proposed pretrial order and shall, where appropriate, give counsel detailed instructions as to the contents of the proposed pretrial order, with which counsel shall speedily comply. Otherwise, upon completion of the conference, the court shall make an order which may recite the above specified matters.

(b) Effect of Pretrial Order. Such order when entered controls the subsequent course of the proceeding, unless modified at the trial to prevent manifest injustice.

(c) Sanctions. If a party fails to comply with any order issued under this rule, the court may impose upon the party or his attorney or both such penalties and sanctions as the circumstances warrant, which may include the dismissal of the action or any part thereof with or without prejudice, the default of a party, the exclusion of evidence at the trial, and the imposition of costs including attorney's fees and travel.

The court may expressly order, where appropriate in its discretion, that the costs of such sanctions be borne by counsel and that they shall not be passed on to counsel's client.

IV. PARTIES

RULE 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

(a) Real Party in Interest. Rule 17(a) of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

(b) Guardians and Other Representatives. Rule 17(b) of the Maine Rules of Civil Procedure governs procedure in all proceedings in the Probate Courts.

(c) Subrogated Insurance Claims. Rule 17(c) of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

RULE 17A. SETTLEMENT OF CLAIMS OF INFANT PLAINTIFFS

Rule 17A of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts, except those brought under sections 3-1101 and 3-1102 of the Probate Code.

RULE 18. JOINDER OF CLAIMS AND REMEDIES

(a) Joinder of Claims.

(1) *Probate Proceedings*. In formal probate proceedings, a petitioner may join as many requests for relief within the exclusive jurisdiction of the court as the petitioner has concerning the estate which, or minor or incapacitated or disabled person who, is the subject of the proceeding. Requests for the appointment of guardians or conservators or other protective orders may be joined with requests for formal orders concerning decedents' estates if the minor or incapacitated or disabled person involved is a person interested in the estate. An application for informal probate may be joined with an application for informal appointment of a personal representative. No other joinder of requests or claims for relief shall be allowed in probate proceedings.

(2) *Civil Proceedings*. In civil proceedings, a party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join either as

independent or as alternate claims as many claims either legal or equitable or both as the party has against an opposing party, provided that each of such claims is independently within the concurrent jurisdiction of the court.

(b) Joinder of Remedies; Fraudulent Conveyances. Rule 18(b) of the Maine Rules of Civil Procedure governs civil proceedings in the Probate Courts.

RULE 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

Rule 19 of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

RULE 20. PERMISSIVE JOINDER OF PARTIES

(a) Permissive Joinder.

(1) *Probate Proceedings*. In probate proceedings, all interested persons who seek the same action or relief may join in any application or petition for an informal or formal order for such action or relief. It shall not be necessary to serve notice of the proceedings upon any person joined as an applicant or petitioner. All interested persons appearing in a probate proceeding who have the same ground of objection may join in stating that objection or filing a written reply as provided in Rule 12(a)(2) of these rules.

(2) *Civil Proceedings*. Rule 20(a) of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

(b) Separate Hearings. Rule 20(b) of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 21. MISJOINDER AND NONJOINDER OF PARTIES

Rule 21 of the Maine Rules of Civil Procedure governs procedure in all proceedings in the Probate Courts.

RULE 22. INTERPLEADER

Rule 22 of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

RULE 23. [RESERVED]

RULE 24. INTERVENTION

Rule 24 of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

RULE 25. SUBSTITUTION OF PARTIES

Rule 25 of the Maine Rules of Civil Procedure governs procedure in all proceedings in the Probate Courts.

V. DEPOSITIONS AND DISCOVERY

RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

Rule 26 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 27. DISCOVERY BEFORE ACTION OR PENDING APPEAL

Rule 27 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

Rule 28 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE

Rule 29 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 30. DEPOSITIONS UPON ORAL EXAMINATION

Rule 30 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 31. DEPOSITIONS UPON WRITTEN QUESTIONS

Rule 31 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS

Rule 32 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 33. INTERROGATORIES TO PARTIES

Rule 33 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

Rule 34 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS

Rule 35 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 36. REQUESTS FOR ADMISSION

Rule 36 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 37. FAILURE TO MAKE DISCOVERY; SANCTIONS

Rule 37 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

VI. HEARINGS

RULES 38 AND 39. [RESERVED]

RULE 40. ASSIGNMENT OF CASES FOR HEARING; CONTINUANCES

(a) Hearing Calendar and Notice of Hearing.

(1) *Calendar*. The Chief Justice may establish by administrative order a uniform procedure under which the register shall schedule probate and civil proceedings for hearing. If the Chief Justice does not establish such a procedure, each judge of probate shall provide by order for such scheduling by the register upon a single calendar or separate probate and civil calendars. Such orders of the judges of probate shall be collected and published annually by the State Court Administrator.

(2) *Date of Hearing*. In formal probate proceedings for the determination of testacy or the appointment of a personal representative, guardian, or conservator, the register shall, upon the filing of the petition, set a date for hearing in accordance with Rule 12(a)(2). The petitioner shall include that date in the notice to be served under Rule 4. In all other formal probate proceedings, and in all civil proceedings, the register shall, upon the filing of the reply or answer, set a date for hearing. At least 14 days prior to the date set, the register shall serve notice of the hearing date by ordinary mail upon the attorneys for the petitioner or plaintiff and all parties who received service of notice or summons under Rule 4, or upon any such party who has no attorney.

(b) *Continuances*. Rule 40(b) of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

(c) *Affidavit in Support of Motion*. Rule 40(c) of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 41. DISMISSAL OF PROCEEDINGS

(a) Voluntary Dismissal; Effect Thereof.

(1) *Probate Proceedings*. No probate proceeding may be dismissed at the instance of the applicant or petitioner save upon the order of the court and upon such terms or conditions, including notice of a proposed dismissal to all interested persons, as the court deems proper. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(2) *Civil Proceedings*. Rule 41(a) of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

(b) Involuntary Dismissal; Effect Thereof.

(1) *Probate Proceedings.*

(A) On Court's Own Motion. The Court, on its own motion, after notice to the parties, and in the absence of a showing of good cause to the contrary, shall dismiss any petition for want of prosecution at any time more than two years after the last docket entry showing any action taken therein by the petitioner, other than a motion for continuance.

(B) In Formal Proceedings. In formal probate proceedings, any interested person may move for dismissal of the petition for failure of the petitioner to take any necessary step for two years or to comply with these rules or any order of Court. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this paragraph and any dismissal not provided for in this rule, other than a dismissal from lack of jurisdiction or for improper venue, operates as an adjudication upon the merits.

(2) *Civil Proceedings.* Rule 41(b) of the Maine Rules of Civil Procedure governs procedure in all civil proceedings in the Probate Courts.

(c) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim.

(d) Costs of Previously Dismissed Proceeding. Rule 41(d) of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 42. CONSOLIDATION; SEPARATE HEARINGS

(a) Consolidation. When proceedings involving a common question of law or fact are pending before a probate court, the court may order a joint hearing of any or all of the matters in issue in the proceedings, if those proceedings are formal probate or civil or both. The court may order proceedings consolidated if they are all formal probate or all civil. The court may make such orders concerning the procedure therein as may tend to avoid unnecessary costs or delay.

(b) Separate Hearings. Rule 42(b) of the Maine Rules of Civil Procedure governs procedure in all proceedings in the Probate Courts.

(c) Convenience and Justice. In making any order under this rule, the court shall give due regard to the convenience of parties and witnesses and the interests of justice.

RULE 43. TAKING OF TESTIMONY

Rule 43 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 44. PROOF OF OFFICIAL RECORD

Rule 44 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 44A. DETERMINATION OF FOREIGN LAW

Rule 44A of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 45. SUBPOENA

Rule 45 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 46. EXCEPTIONS UNNECESSARY

Rule 46 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULES 47 TO 49. [RESERVED]

RULE 50. MOTION FOR JUDGMENT

Rule 50(d) of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts, so far as applicable.

RULE 51. ARGUMENT OF COUNSEL

Rule 51(a) of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts, so far as applicable.

RULE 52. FINDINGS BY THE COURT

Rule 52 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts, so far as applicable.

RULE 53. REFEREES

Rule 53 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts, so far as applicable; provided that the compensation and necessary expenses of a referee shall be paid by the county in all cases in which they are not to be paid in whole or in part by the parties or out of a fund or other subject matter of the action.

VII. JUDGMENT

RULE 54. JUDGMENT; COSTS

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. Rule 54(b) of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

(c) Demand for Judgment. Rule 54(c) of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

(d) Allowance of Costs.

(1) *Probate Proceedings*. In all contested formal probate proceedings, costs may be allowed to either party out of the estate in controversy as provided by statute and these rules, or in the discretion of the court may be allowed against a losing party in the event of a frivolous or malicious claim or objection.

(2) *Civil Proceedings*. In all civil proceedings, costs shall be allowed to the prevailing party as provided for civil actions in Rule 54(d) of the Maine Rules of Civil Procedure.

(e) Taxation of Costs.

(1) *Probate Proceedings*. In formal probate proceedings, costs shall be taxed by the court upon a statement presented by each party claiming them. Taxation of costs shall be conducted at a hearing in open court upon notice to all parties who have appeared in the proceeding.

(2) *Civil Proceedings*. Rule 54(e) of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

(f) Schedule of Fees.

(1) *Probate Proceedings*. The following schedule of fees shall be taxable as costs:

(A) Attorneys and Witnesses. As provided by statute.

(B) Register for the Use of Counties. As provided by statute.

(C) Miscellaneous.

Service as taxed by the officer, subject to correction.

Surveyors, commissioners, and other officers appointed by the court, fees as charged by them subject to correction.

Costs of reference as reported by the referee and allowed by the court, provided that when in hearings on default the register serves as referee, he shall not be compensated.

(2) *Civil Proceedings*. Rule 54(f) of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts, provided that in hearings on default, when the register serves as referee, he shall not be compensated.

(g) Costs on Depositions. Rule 54(g) of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 54A. FEES

In addition to any filing or entry fees required by law or rule, the fees of the Probate Courts shall be as follows:

All notices furnished by the register, \$ 1.00 for each notice;

Issuance of subpoena or summons, \$ 1.00 each;

Certification and attestation of copies, \$ 3.00 each;

Filing of notice of removal of a proceeding to the Superior Court, \$ 100.00, exclusive of entry fee paid to the Superior Court;

Registration of trust, \$ 10.00;

Filing a notice of domiciliary foreign conservator's appointment, \$ 5.00;

Demand for notice, \$ 10.00;

Filing of notice of appeal to the Law Court, \$ 100.00, exclusive of entry fee paid to the Law Court;

Statutory will form, \$ 1.00;

Claim against estate, \$ 10.00; and

Filing of petition or complaint in a civil proceeding, \$ 60.00.

Fees for official probate court forms are addressed in Rule 84.

RULE 55. DEFAULT

(a) Entry. When a party who has been served with notice of a petition in formal probate proceedings for the determination of testacy or the appointment of a personal representative, guardian or conservator does not make written or oral reply as provided in Rule 12(a)(2), and that fact is made to appear by affidavit or otherwise, the register shall enter the party's default. When a party who has been served with notice of such a petition, or of any petition in other formal probate proceedings, or against whom a judgment for affirmative relief is sought in civil proceedings, has

otherwise failed to plead or otherwise act or defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the register shall enter the party's default.

(b) Judgment; Setting Aside Default; Plaintiffs, Counterclaimants, Cross-Claimants. Rule 55(b)-(d) of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts, so far as applicable, except that the appointment of a guardian ad litem or other such representative to appear on behalf of an infant or incompetent person in formal probate proceedings under paragraph (2) of subdivision (b) of that rule shall be required only upon an order of the judge.

RULE 56. SUMMARY JUDGMENT

Rule 56 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 57. DECLARATORY JUDGMENTS

Rule 57 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts, so far as applicable.

RULE 58. ENTRY OF JUDGMENT OR INFORMAL STATEMENT OR ORDER

In a formal probate or civil proceeding, when the judge directs that a party recover only money or costs or that all action or relief sought be denied, the register shall enter judgment forthwith upon receipt by the register of the direction; but when the judge directs entry of judgment for other action or relief, the judge shall promptly settle or approve the form of judgment and direct that it be entered by the register. The notation of a judgment in the docket in accordance with Rule 79(a) constitutes the entry of judgment; and the judgment is not effective before such entry. The entry of the judgment shall not be delayed for the taxing of costs. In an informal probate proceeding, the register shall forthwith note a written statement of informal probate or order of informal appointment in the docket as provided in Rule 79(a). Informal probate or appointment is not effective before such notation.

RULE 59. NEW TRIALS; AMENDMENTS OF JUDGMENTS

Rule 59 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Rule 60(a) of the Maine Rules of Civil Procedure governs procedure in all proceedings in the Probate Courts.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. Rule 60(b) of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 61. HARMLESS ERROR

Rule 61 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Probate Proceedings. Unless otherwise ordered by the court, a judgment in a formal probate proceeding shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. On motion and a showing, subject to the obligations set forth in Rule 11, that a party intends to make a motion pursuant to Rule 52(b), 59 or 60, or to take an appeal, the court may grant a stay of a judgment pending the disposition of such motion or the taking of such appeal or during the pendency of an appeal. Any stay granted pursuant to this subdivision shall be on such terms as to bond or otherwise as the court considers proper for the security of the rights of all other parties. Rule 62(d), (g) and (h) of the Maine Rules of Civil Procedure governs procedure in all formal probate proceedings, so far as applicable.

(b) Civil Proceedings. Rule 62 of the Maine Rules of Civil Procedure governs procedure in all civil proceedings in the Probate Courts, so far as applicable, substituting Probate Court for Superior Court in subdivision (a) of that rule.

RULE 63. DISABILITY OF A JUDGE

Rule 63 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

RULE 64. REPLEVIN

Rule 64 of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

RULE 65. INJUNCTIONS

(a) Probate Proceedings. Proceedings for discovery of property under section 3-110 of the Probate Code and proceedings to restrain a personal representative under section 3-607 and a conservator under section 5-416 of the Probate Code are formal probate proceedings, and Rule 65 of the Maine Rules of Civil Procedure governs procedure in such proceedings so far as applicable. In other formal probate proceedings, ancillary injunctive relief as provided in that rule may be sought by any party on motion and notice pursuant to Rule 5.

(b) Civil Proceedings. Rule 65 of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

RULE 66. RECEIVERSHIPS

A proceeding wherein a receiver has been appointed shall not be dismissed except by order of the court. Except as otherwise provided by statute, the practice in proceedings for receiverships and in actions brought by or against a receiver shall be governed by these rules and the Maine Rules of Civil Procedure.

RULE 67. DEPOSIT IN COURT

Rule 67 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts, substituting Probate Court for District Court and register for clerk.

RULE 68. OFFER OF JUDGMENT

Rule 68 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 69. EXECUTION

Rule 69 of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

RULE 70. JUDGMENT FOR SPECIFIC ACTS

Rule 70 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

RULE 71. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES

Rule 71 of the Maine Rules of Civil Procedure governs procedure in all formal probate and civil proceedings in the Probate Courts.

VIIIA. REMOVAL

RULE 71A. REMOVAL TO THE SUPERIOR COURT

(a) Who May Remove; Time. Any party to a civil proceeding may, within 20 days after service of the last required pleading or within 10 days after service of any amendment to the pleadings or any responsive pleading permitted thereto, remove the proceeding to the Superior Court in the county in which the Probate Court where the proceeding was commenced sits.

(b) Procedure for Removal. Removal shall be effected by filing notice thereof, serving a copy thereof upon all other parties, and paying to the register the required fees, including the entry fee in and the cost of forwarding the proceeding to the Superior Court. The register shall thereupon file in the Superior Court a copy of the original papers and exhibits and transcript, if any, in the proceeding, together with a certified copy of all docket entries under the master docket number for the estate, guardianship, or trust under which the proceeding to be removed is docketed; provided that the Probate Court shall first determine any motion for approval of attachment, trustee process, or replevin pending at the time of removal. If prior to removal a pleading required of the removing party has not been filed, it shall be filed forthwith in the Superior Court. Thereafter, the action shall be prosecuted in the Superior Court as if originally commenced therein. If the party giving notice of removal does not comply with the requirements of this subdivision, the proceeding shall be heard and determined in the Probate Court as if no notice of removal had been given.

(c) Effect of Orders. Any order of the Probate Court entered prior to removal shall remain in force until modified by the Superior Court.

(d) Joint or Several Removal. Parties interested jointly, severally, or otherwise in any civil proceeding may join in removal thereof; or any one or more of them may remove separately or any two or more of them may join in removal.

(e) Removal for Consolidation. Any party to a civil proceeding may at any time before the hearing on the merits remove the proceeding to the Superior Court in any county for purposes of joint hearing or trial or consolidation with a civil action there pending, as provided in Rule 42(a) of the Maine Rules of Civil Procedure. The party seeking removal shall first move in the Superior Court for an order granting joint hearing or trial or consolidation, conditional on completion of the removal. If that motion is granted, the party may file and serve notice of removal as provided in subdivision (b) of this rule, appending thereto a certified copy of the Superior Court's order. All subsequent proceedings shall be in accordance with subdivisions (b)-(d) of this rule.

IX. APPEALS

[Appeals are governed by the Maine Rules of Appellate Procedure]

RULES 72 to 74C. [ABROGATED]

RULE 74D. [REDESIGNATED]

Rule 74D is redesignated as Rule 40, subsection (d), effective January 1, 2001.

RULES 75 to 76A. [ABROGATED]

X. PROBATE COURTS AND REGISTERS

RULE 77. PROBATE COURTS AND REGISTERS

(a) Probate Courts Always Open. The Probate Courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules. Filings outside of normal business hours and at places other than appropriate for the venue of the proceeding are governed by Rule 5.

(b) Trials and Hearings; Orders in Chambers. Rule 77(b) of the Maine Rules of Civil Procedure governs procedure in the Probate Courts.

(c) Register's Office. The register's office with the register or a deputy in attendance shall be open during such hours as the Chief Justice of the Supreme Judicial Court may designate, on all days except Saturdays, Sundays, and legal holidays, and except such other days as the Chief Justice may designate.

(d) Notice of Orders or Judgments. Rule 77(d) of the Maine Rules of Civil Procedure governs procedure in the Probate Courts.

(e) Facsimile Signature of the Register. A facsimile signature of the register imprinted at the register's direction upon any summons, writ, subpoena, judgment, order, or notice, except executions, shall have the same validity as the register's signature.

RULE 78. [RESERVED]

RULE 79. BOOKS AND RECORDS KEPT BY THE REGISTER AND ENTRIES THEREIN

(a) The Docket. The register shall keep the docket, and shall enter therein every proceeding to which these rules are fully applicable or which is enumerated in Rule 81(b). Each estate of a decedent, each guardianship, each estate of a minor or incapacitated or disabled person, and each trust shall be assigned a master docket number when the first proceeding concerning it is commenced in the court. The first and each subsequent proceeding concerning that estate, guardianship, or trust shall be assigned a subsidiary docket number consisting of the master docket number and a numerical suffix identifying that proceeding. The register may keep a single master docket, listing all estates, guardianships, and trusts in one numerical sequence with all proceedings concerning a particular estate, guardianship, or trust listed under it, or the register may keep separate dockets with separate numerical sequences for each category. Each proceeding enumerated in Rule 81(b) shall be assigned a separate docket number, and may be listed on a single docket or separate dockets, except that adoption proceedings must be listed on a separate docket which shall be kept confidential. Upon the commencement of a proceeding, the full name of each party and the name and address of the applicant's, petitioner's, or plaintiff's attorney, if any, shall be entered upon the docket. Thereafter the name and address of the attorney appearing or answering for any party shall similarly be entered. All papers filed with the register, all appearances, orders, and judgments shall be noted chronologically

upon the subsidiary docket and shall be marked with the docket number. These notations shall briefly show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. In the alternative, the notation of an order or judgment may consist of an incorporation by reference of a designated order, judgment, opinion, or other document filed with the register by the court, provided that the notation shows that it is made at the specific direction of the court. The notation of an order or judgment shall show the date the notation is made.

(b) Judgments and Orders. After the rendition of judgment, the register shall without unreasonable delay, make extended records of all matters required by statute, and proceedings in real actions including foreclosure of mortgages, flowage and partition. In other proceedings, it shall be sufficient to record the names of the parties, the docket number, the date of the complaint, the date of service, and the petition or date of rendition of judgment, its nature and the amount of any damages or costs awarded. Upon application of any party made not later than 90 days after final judgment the court may order the preparation, upon payment of fees ordered by the court, of a full record in any proceeding or such additional record as the party requests. The Chief Justice of the Supreme Judicial Court shall prescribe the form and manner of making and keeping such records and may prescribe such further records to be kept as the Chief Justice may deem appropriate.

(c) Custody of Papers by the Register. The register shall be answerable for all records and papers filed with the court, and they shall not be taken from the register's custody without special order of the court; but the parties may at all times have copies.

(d) Other Books and Records. The register shall keep such other books and records as may be required by statute or from time to time by the Chief Justice of the Supreme Judicial Court.

XI. SPECIAL RULES FOR CERTAIN PROCEEDINGS

RULE 80. [RESERVED]

RULE 80A. REAL ACTIONS

Rule 80A of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

RULE 80B. CREDITORS' CLAIMS AGAINST DECEDENTS' ESTATES

(a) Notice to Creditors. The notice to creditors required by section 3-801 of the Probate Code shall be published by the register in the personal representative's behalf upon written request and tender of fees.

(b) Written Statement. If a claimant wishes to present a claim by filing the written statement of claim provided by section 3-804 of the Probate Code, the claimant shall, within the time limits of 3-803 of the Probate Code, file with the register the official form for a Statement of Claim.

(c) Proceedings By and Against the Personal Representative. Proceedings brought by claimants under section 3-807(a) of the Probate Code for payment of claims that have been allowed are formal probate proceedings under these rules. Proceedings brought by claimants under section 3-804(2) of the Probate Code to obtain payment of claims that have not previously been granted, or under section 3-806 of the Probate Code to obtain payment of claims that have been presented and disallowed, are civil proceedings under these rules. Proceedings brought by the personal representative under section 3-806(b) of the Probate Code for allowance of claims are civil proceedings.

XII. GENERAL PROVISIONS

RULE 81. APPLICABILITY

(a) To What Proceedings Fully Applicable. These rules apply to all proceedings in the Probate Courts, with the exceptions set forth in subdivision (b) of this rule. They apply to proceedings on removal to the Superior Court and on appeal to the Supreme Judicial Court sitting as the Law Court. A civil proceeding under these rules is appropriate whether the matter was one formerly cognizable at law or in equity and irrespective of any statutory provisions as to the form of action.

(b) Limited Applicability. These rules do not alter the practice prescribed by the statutes of the State of Maine or other rules of court for beginning and conducting the following proceedings in the Probate Courts:

(1) Proceedings for adoption under 19 M.R.S.A. § 531.

(2) Proceedings for change of name under 19 M.R.S.A. § 781.

(3) Proceedings upon child protection petitions under 22 M.R.S.A. § 4031(1)(B).

(4) Proceedings for emergency admission to a mental hospital under 34 M.R.S.A. § 2333(1).

In respects not covered by statute, the practice in these proceedings shall conform as nearly as possible to these rules, consistent with a just and speedy determination of each proceeding. The procedure on any appeal permitted in these proceedings shall be in accordance with these rules.

(c) [Reserved].

(d) Writs Abolished. Rule 81(d) of the Maine Rules of Civil Procedure governs procedure in civil proceedings in the Probate Courts.

(e) Terminology in Statutes and Rules of Civil Procedure.

(1) When a provision of the Maine Rules of Civil Procedure is incorporated in these rules by reference, the terminology of the civil rule, where inconsistent with that of these rules or inappropriate under these rules, shall be taken to mean the individual, term, device, or procedure proper under these rules.

(2) In applying these rules to any proceeding to which they are applicable, the terminology of any statute which is also applicable, where inconsistent with that in these rules or inappropriate under these rules, shall be taken to mean the individual, term, device, or procedure proper under these rules.

(f) When Procedure Is Not Specifically Prescribed. When no procedure is specifically prescribed, the court shall proceed in any lawful manner not inconsistent with the Constitutions of the United States or the State of Maine, these rules, the Probate Code, or any other applicable statute.

RULE 82. JURISDICTION AND VENUE UNAFFECTED

These rules shall not be construed to extend or limit the jurisdiction of the Probate Courts, the Superior Court, or the Supreme Judicial Court or the venue of actions therein.

RULE 83. DEFINITIONS

Unless specified to the contrary, the following words whenever used in these rules shall have the following meanings:

(1) The word "court" shall include the judge of any one of the several Probate Courts of this state.

(2) The words "petitioner" and "petition" shall include "applicant" and "application" where appropriate in context.

(3) The term "plaintiff's attorney" or "defendant's attorney" or any like term shall include the party appearing without counsel.

(4) The word "proceeding" means a course of procedure invoking the jurisdiction of the judge to grant a judgment or take other appropriate action or the jurisdiction of the register to grant informal probate or appointment.

(5) The word "register" shall mean the register of the Probate Court in which the action is pending.

RULE 84. FORMS

(a) Use of Official Forms. The forms listed in the Appendix of Forms are official forms. All persons involved in matters within the Probate Court's jurisdiction must use official forms. The official forms are intended to indicate the simplicity and brevity of statement which the rules contemplate and may serve as guides in cases for which no official form exists.

(b) Printing and Certification Requirements for Official Forms Not Purchased from the Register. Rule 5(i) of the Maine Rules of Civil Procedure governs proceedings in the Probate Courts, except that all official forms shall be printed in accordance with the following standards:

Official Probate Court forms are to be printed in a uniform format and type approved by the Maine Association of Registers of Probate and utilizing 20 lbs. acid-free natural-white 25% cotton fiber paper or better and 600 dot per inch black laser printer or better. Any official form not purchased from the Register shall include, at the time of filing, a written certification by the preparer of the form that no alteration has been made to the official form as most recently approved and promulgated by the

Supreme Judicial Court, which certification must appear on the form immediately following the last line of the form.

(c) Fees for Official Forms. Fees for official forms shall be set by the Registers of Probate in accordance with Title 18-A, Section 1-511. The fee will be charged at the time an official form is purchased from the Register. If the official form is prepared in accordance with paragraph (b) of this rule, the fee will be charged at the time the official form is presented to the Register for filing.

RULE 85. TITLE

These rules may be known and cited as the Maine Rules of Probate Procedure.

RULE 86. EFFECTIVE DATE

(a) Effective Date of Original Rules. These rules will take effect on January 1, 1981. They govern all proceedings brought after they take effect and also all proceedings then pending, except to the extent that in the opinion of the court their application in a particular proceeding pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(b) Effective Date of Amendments. Amendments to these rules will take effect on the day specified in the order adopting them. They govern all proceedings brought after they take effect and also all proceedings then pending, except to the extent that in the opinion of the court their application in a particular proceeding pending when they take effect would not be feasible or would work injustice, in which event the former procedure applies.

RULES 87 AND 88. [RESERVED]

RULE 89. WITHDRAWAL OF ATTORNEYS; VISITING LAWYERS

Rule 89 of the Maine Rules of Civil Procedure governs procedure in all proceedings in the Probate Courts.

RULE 90. LEGAL ASSISTANCE BY LAW STUDENTS

Rule 90 of the Maine Rules of Civil Procedure governs procedure in all proceedings in the Probate Courts.

RULE 91. PROCEEDINGS IN FORMA PAUPERIS

Rule 91 of the Maine Rules of Civil Procedure governs procedure in all proceedings in the Probate Courts, provided that initial payment of service costs shall be an administrative expense of the Probate Court and the Register of Probate shall take any action appropriate to obtain reimbursement of waived filing fees and service costs paid.

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